

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
vs.	:	
	:	
LOUIS STILLIS, a/k/a "Lou Bop,"	:	NO. 04-680-03
KENNETH WILSON, a/k/a "Kenny,"	:	04
SHERRON MOORE, a/k/a "Manny,"	:	05
TYRONE TRADER, a/k/a "Saleem,"	:	06
JAMAL RIDEOUT, a/k/a "Dub,"	:	07

**ORDER AND MEMORANDUM**

**ORDER**

**AND NOW**, this 22<sup>nd</sup> day of June, 2006, upon consideration of defendant Louis Stillis' Motion to Preclude Use of Recorded Telephone Conversations (Document No. 207, filed December 16, 2005), the Government's Motion to Admit Recordings and Response to Stillis' Motion to Exclude Tape Recordings (Document No. 227, filed February 9, 2006), Defendant's Memorandum in Support of Motion to Preclude the Use of Recorded Telephone Conversations (Document No. 257, filed March 21, 2006), and the United States' Memorandum of Law in Response to Defendants' Memoranda in Support of Motions to Preclude Use of Recorded Telephone Conversations (Document No. 259, filed April 6, 2006), joined in by defendants Kenneth Wilson, Sherron Moore, Tyrone Trader, and Jamal Rideout, following oral argument on the Motion on February 15, 2006, for the reasons set forth below, **IT IS ORDERED** that defendant Louis Stillis' Motion to Preclude Use of Recorded Telephone Conversations is **DENIED**, and the Government's Motion to Admit Recordings and Response to Stillis' Motion to Exclude Tape Recordings is **GRANTED**.

**MEMORANDUM**

Defendant Louis Stillis was charged with eight co-defendants in a 53-count superseding

indictment. The charges against defendant Stillis are conspiracy to distribute cocaine (21 U.S.C. § 846), distribution of cocaine (21 U.S.C. § 841(a)(1)), distribution of cocaine within 1000 feet of a school (21 U.S.C. § 860), and possession of a firearm by a convicted felon (18 U.S.C. § 922(g)). The government seeks to introduce in evidence recorded conversations it obtained through a court-authorized wiretap, and has filed a Motion to Admit Recordings and Response to Stillis' Motion to Exclude Tape Recordings. Defendant Stillis has filed a Motion to Preclude Use of Recorded Telephone Conversations.<sup>1</sup> For the reasons that follow, defendant's motion is denied, and the government's motion is granted.

In offering tape recorded conversations, the burden is on the government to produce evidence of authenticity and accuracy in order to lay a foundation for the admission of such recordings. United States v. Starks, 515 F.2d 112, 121 (3d Cir. 1975). Starks lays out the seven factors that a court should consider in deciding whether to admit recordings.

1. The recording device was capable of accurately recording the conversations offered into evidence;
2. The operator of the device was competent to operate the device;
3. The recordings are authentic and correct;
4. Changes, additions or deletions have not been made in the recordings;
5. The recordings have been preserved in an appropriate manner;
6. The speakers are identified; and,
7. The conversations elicited were made voluntarily and in good faith, without any kind of inducement.

Id. at 121 n.11.

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<sup>1</sup> Defendants Wilson, Trader, Moore, and Rideout filed general motions for joinder in all motions filed by co-defendants, and those motions were granted. By Order dated March 13, 2006, the Court ordered all defendants to file specific objections to the recordings, including objections based on the identification of the speaker. Only defendants Stillis and Moore filed specific objections. Because defendants Wilson, Trader, and Rideout did not file specific objections to the use of tape recordings, the Court concludes that they have no objections to the admission into evidence at trial of the recordings and transcripts of the recordings. This Order and Memorandum does not address defendant Moore's specific objections to the recordings.

Defendant's motion addresses only the sixth Starks factor; he argues that the Government has not shown by a preponderance of the evidence that defendant is the speaker in the recordings. The Government counters that it presented sufficient evidence identifying defendant Stillis as the speaker in the recordings through Trooper Skahill's testimony at the hearing on February 15, 2006.

The Starks opinion required the government to produce "clear and convincing evidence" of the recording's authenticity. Id. at 121. However, the opinion was issued before the adoption of Federal Rule of Evidence 901(a), which governs authentication of evidence. See United States v. Tubbs, 1990 WL 27365, at \*3 (E.D. Pa. Mar. 12, 1990) ("Starks was decided before the Federal Rules of Evidence took effect on July 1, 1975."). Rule 901(a) provides that the requirement of authentication is satisfied "by evidence sufficient to support a finding that the matter in question is what its proponent claims." Regarding the specific example of voice identification, the Rule provides for identification "based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." Rule 901(b)(5).

Several Courts of Appeals have concluded that the government's burden in identifying the speaker in recorded conversations is relatively minimal. See United States v. Bush, 405 F.3d 909, 919 (10th Cir. 2005) ("Such voice identification need only to rise to the level of minimal familiarity."); United States v. Plunk, 153 F.3d 1011, 1023 (9th Cir. 1998) ("Rule 901(b)(5) establishes a low threshold for voice identifications offered to determine the admissibility of recorded conversations."). "Any person may identify a speaker's voice if he has heard the voice at any time." United States v. Cerone, 830 F.2d 938, 949 (8th Cir. 1987).

In the only opinion in this circuit on the subject of voice identification, Judge Shapiro held that under Rule 901(a), the government "need only produce evidence sufficient to convince

a reasonable jury by a preponderance of the evidence that defendant is the speaker in order to permit the jury to hear the tape recording.” Tubbs, 1990 WL 27365, at \*3. Judge Shapiro explicitly rejected the proposition that the government must prove voice identification by clear and convincing evidence or by a preponderance of the evidence (as opposed to evidence *sufficient to convince a reasonable jury* by a preponderance of the evidence). Id.

The Court concludes that the Government has presented sufficient evidence to convince a reasonable jury by a preponderance of the evidence that defendant Stillis is the speaker on the tapes. At the hearing held on February 15, 2006, Trooper Skahill testified that he had one or two telephone conversations with an individual he believed to be defendant Stillis. Tr. 62:3-5. Other police officers, who had engaged in face-to-face purchases with defendant Stillis, assisted Trooper Skahill in identifying defendant Stillis’s voice on the recordings. Tr. 63:3-12. Finally, Trooper Skahill testified that he personally spoke with defendant Stillis at the time he was arrested. Tr. 59:13-17. Trooper Skahill and the other police officers working with him had a sufficient level of familiarity with defendant Stillis’s voice to identify it on the recorded conversations. Any attacks by defendants on the accuracy of the identification go to the weight of the evidence, and will be for the jury to decide. Cerone, 830 F.2d at 949; Tubbs, 1990 WL 27365, at \*3. Therefore, the Court will admit the tape recorded conversations and transcripts of the conversations into evidence.

**BY THE COURT:**

/s/ Honorable Jan E. DuBois  
**JAN E. DUBOIS, J.**